

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2588 of 1993

TO

FIRST APPEAL NO.2596 OF 1993

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PATEL VAKTABHAI KODARBHAI

Appearance:

Mr. P.G. Desai, GP for appellants in FA 2588 to 2592 of 1993

Mr. S.J. Dave, AGP for appellants in FA 2593 to 2596 of 1993

SERVED for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 04/02/98

1. These are a group of appeals filed under section 54 of the Land Acquisition Act, 1894, read with section 96 CPC, filed by the State of Gujarat, challenging the judgement and awards passed by the Reference Court under section 18 of the Land Acquisition Act in a group of land reference cases. Since the Reference Court has decided the group of land reference cases by a common judgement, these appeals can conveniently be disposed of similarly.

2. We do not propose to go deeper into the factual aspects of the matter and shall confine ourselves to only referring to the relevant facts, inasmuch as the points of challenge in the present group of appeals are mainly on questions of principles rather than of facts.

3. Learned counsel for the appellant-State has, no doubt, attempted to challenge the judgement and awards on the question of proper determination of compensation and the proper valuation of the lands under acquisition on the date of the notification. However, after having drawn our attention to the relevant facts of the matter, it becomes apparent that the compensation determined by the Reference Court at Rs.240/- per Are is based on a total appreciation of the evidence on record including documentary and oral evidence. However, what is most obvious is that the Reference Court has relied upon a decision of this court (Exh.75) being a judgement in a group of First Appeal Nos.574/79 to 579/79, which pertained to acquisition of lands in the village Chambalpur, i.e. the same village with which we are presently concerned in these group of appeals. It is also significant to note that the notification considered as relevant under section 4 of the Land Acquisition Act in the aforesaid decision was dated 29th July 1971, whereas the corresponding notification in the present group of appeals is dated 26th October 1972. In other words, the notification with which we are concerned is the later one by a period of one year and three months. It also appears that the purpose of acquisition dealt with in the aforesaid decision pertained to the same project, viz. the Dharoi Project. The compensation awarded under the aforesaid decision, was at the rate of Rs.9000/- per acre which comes to Rs.225/- per Are. We are in concurrence with the opinion expressed by the Reference Court that the aforesaid decision of this court at Exh.75 would be the best evidence and would form the best basic guideline for the purpose of determination of the market value of the lands presently under consideration. The Reference Court has, therefore, made

a token allowance for the intervening period of one year and three months, in the issuance of the section 4 notification which is relevant for the present group of cases, and has determined the compensation at Rs.240/per Are. We note that this increment corresponds to an increase of approximately 10 per cent per year. This increment is in consonance with the broad principle and also in consonance with other evidence on record that the lands in the village as also the surrounding lands were rising in value from year to year on account of general development of the surrounding lands and also on account of the inflation and fall in the purchase price of the rupee, etc. In short, learned counsel for the appellant is not able to assail the determination of market value of the acquired lands as being unreasonable on this ground or any other ground.

4. Learned counsel for the appellant has sought to assail the awards on the question of limitation. It is not in dispute and is also apparent from the record that the award of the LAO is dated 17th March 1975, whereas the applications for making a reference under section 18 filed by the respective claimants before the LAO are dated 20th April 1975. Obviously, therefore, on a prima facie basis the reference applications have been made within the prescribed period. However, learned counsel for the appellant seeks to make an arguable point out of the fact that the reference applications in question were forwarded by the LAO to the Reference Court apparently after 13 years, inasmuch as the same came to be registered in the Reference Court as references of the year 1988. Learned counsel for the appellant suggests that this delay of 13 years is sufficient to invoke the bar of limitation.

4.1 This submission is obviously misconceived inasmuch as the claimant is merely required to file his application for reference before the LAO within the prescribed period of limitation, and is not required to file the same, and in fact has no right to file the same directly in the Reference Court. Thus, if the LAO has not taken the trouble to forward the applications to the Reference Court for a number of years, or if there were any other reasons for not forwarding the same to the Reference Court for a number of years, the same would not affect the limitation at all. Learned counsel for the appellant has further sought to suggest that if the reference application had in fact been filed on 20th April 1975 before the LAO, which is the date borne by the said applications, it is inconceivable that the claimants

would not have taken any action or would have remained silent without protest or complaint for 13 years. This submission is made only with a view to suggest that the said applications were back-dated and then slipped into the record of the LAO's office. We are not inclined to take cognizance of this mere suggestion made before us without any foundation of fact. In fact, if at all this was a distinct possibility as suggested by the learned counsel for the appellant, the State would have specifically pleaded and would have specifically led evidence to show that the filing of the reference application bearing a back date in the office of the LAO was a case of fraud or corruption or at the very least connivance. Learned counsel for the appellant is not able to point out the slightest averment made either in the pleadings or even oral submissions made before the Reference Court that the reference applications were back-dated and then fraudulently or otherwise inserted into the record of the LAO. In any case in absence of specific pleadings, we find that there is no specific issue and therefore no opportunity was available to the claimants to lead evidence which they otherwise could have led. On the other hand, the Reference Court has rightly taken note of the fact that even in the absence of the specific issue, the State could have led specific evidence, both oral as also documentary, to show that the reference applications were in fact not filed in the office of the LAO on the date which they in fact bear. The Reference Court has specifically dealt with in detail, the evidence which could have been led by the State in this regard, but which in fact has not been led. We are, therefore, not inclined to act merely on the oral suggestion of the learned counsel for the appellant, nor to act upon the suggestion by drawing an adverse inference against the claimants, merely because, apparently, they have not made any protest as regards the delay in forwarding the reference application to the Reference Court.

5. Another contention sought to be raised by the learned counsel for the appellant is to the effect that the reference under section 18 is incompetent since the LAO's award is a consent award. This contention again is merely to be recorded in order to be rejected. There is absolutely nothing on record to indicate that the LAO's award was a consent award, either on the basis that consent has been given during the course of hearings before the LAO or on the basis that there is an agreement between the claimants and the acquiring body to that effect. With a view to support this submission, learned counsel for the appellant has drawn our attention to a

reference made in the judgement, which, in our view, is a mere casual and passing observation, and not a finding of fact in any sense of the phrase. The said observation reads: "the said award is passed as per the consent award". From a bare casual observation made in the impugned judgement, we are unable to make out even with the assistance of the learned counsel for the appellant, whether this is a contention taken by the State in its written statement before the Reference Court or whether it is a statement of fact based upon a statement made in the LAO's award itself. Learned counsel for the appellant is unable to point out with reference to any document on record as to how the LAO's award could be regarded to be a consent award and/or what is the source or basis on the part of the Reference Court for making the observation quoted by us hereinabove. In any case, the submission made by the learned counsel for the appellant before us was admittedly neither argued nor pressed before the Reference Court, and consequently no issue was raised, and necessarily, therefore, the claimants had no opportunity of leading any evidence whatsoever on this question. In the absence of factual material on record, we are not inclined to accept this contention on the part of the learned counsel for the appellant. We may merely note in passing that the learned counsel for the appellant was unable to point out from the record the so-called agreement on the basis of which the consent award could possibly have been passed.

6. The next contention sought to be raised by the learned counsel for the appellant again pertains to the maintainability of the reference in the light of section 31, sub-section (2) of the Land Acquisition Act. In this context, learned counsel referred to the second proviso to sub-section (2), and sought to raise a bar to the References with reference thereto. The said proviso reads as under:

"Provided also that no person who has received
the amount otherwise than under protest shall be
entitled to make any application under section
18."

A plain reading of this proviso leaves no doubt that a reference would be barred only if the claimant has received the amount under the LAO's award without qualification or without protest or without any endorsement intended to preserve his right to prefer a reference application under section 18. However, when we inquired from the learned counsel for the appellant, as to how he proposes to substantiate the averment, that the

amount was received by the claimants without protest, he was unable to point out any relevant material on record. In our opinion, there cannot be any controversy as to the fact that section 18 of the said Act first confers a right upon the owner of the acquired land, to apply to the Collector for making a reference under the said section, which right is then qualified and/or restricted by the second proviso to sub-section (2) of section 31. Thus, in order that the principal right be restricted or be taken away, the conditions stipulated by the said proviso must be established. In our opinion, therefore, it is for the appellant to establish by appropriate evidence on record, that the claimants had received the amount of the award without protest or without qualification, in order to invoke the bar provided for by the said proviso. In the absence of any material on record, we are, therefore, not inclined to draw a presumption that the amount payable to the claimants under the award of the LAO was received without protest, particularly inasmuch as this was not a factual question raised before the Reference Court.

7. No other contentions have been urged.

8. In the premises aforesaid, the impugned judgement and awards are upheld and the present appeals are dismissed. There shall be no order as to costs.

9. The Registry is directed to place a copy of this judgement in each of these appeals.
